IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.27210 of 2016
and
W.M.P.No.23351 of 2016

M/s.Higrive Water System,
Rep. by Proprietrix Smt.T.Punidhavathi,
No.128, Shanthi Nagar, 1st Street,
Chrompet, Chennai - 44. ... Petitioner

Vs.

The Commercial Tax Officer,
Chrompet Assessment Circle,
No.117, Station Road,
Radha Nagar, Chrompet,
Chennai - 44. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, calling for the records on the file of the respondent proceedings in CST/1127103/2014-15 dated 15.06.2016 and quash the same being invalid and violated the principles of natural justice and also without authority of law.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader
(Taxes)

O R D E R

Heard Mr.D.Vijayakumar, learned counsel appearing for the petitioner. Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) accepts notice on behalf of the respondents and with their consent, the writ petition is taken up for disposal.

2.This writ petition has been filed by the petitioner challenging the order of assessment under the Central Sales Tax

Act, 1959 (hereinafter referred to as the CST Act) for the year 2014-15. The petitioner's challenge to the impugned order is on the ground that it has been passed without giving opportunity to the petitioner since pre-assessment notice was not served on the petitioner.

3.In order to verify the correctness of the said submission, this Court directed the learned Additional Government Pleader (Taxes) appearing for the respondent to get instructions in the matter by order dated 04.08.2016 (Yesterday).

4.The learned Additional Government Pleader (Taxes) appearing for the respondents has promptly got written instructions from the respondent and has also produced the original file.

5.From the original file, it is seen that the pre-assessment notice has been received by one Saravana Muthu on 11.05.2016. According to the petitioner, the said Saravana Muthu is not an Accountant of the petitioner but at that point of time, he was engaged as Consultant. If this stand is taken by the dealer, then this being disputed question of fact, the dealer should have gone before the Appellate Authority and established the same.

6.Faced with such a situation, the learned counsel appearing for the petitioner, on instructions, would submit that the petitioner is ready to pay 25% of the disputed tax and he may be directed to submit the objections and contest the assessment on merits.

7.I have heard the learned Additional Government Pleader (Taxes) appearing for the respondent on the above submission.

8.Taking note of the submission made on either side, the petitioner is directed to pay 25% of the disputed tax within a period of three weeks from the date of receipt of a copy of this order and if the petitioner complies with the said condition, the petitioner will be entitled to treat the impugned assessment order as show cause notice and submit their objections to the same within a period of two weeks thereafter. On receipt of the objections, the respondent shall consider the same and re-do the assessment in accordance with law after affording an opportunity of personal hearing to the petitioner. If the petitioner fails to comply with the condition imposed by this Court supra within the time stipulated, the benefit of this order will not enure to the petitioner and the writ petition would stand automatically dismissed without further reference to this Court leaving it open to the petitioner to work out the remedy under the Act.

9.With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cse

To

The Commercial Tax Officer,
Chrompet Assessment Circle,
No.117, Station Road,
Radha Nagar, Chrompet,
Chennai - 44.

+1cc to Mr.D.Vijayakumar, Advocate, S.R.No.44557
+1cc to the Special Government Pleader(T), S.R.No.44771

W.P.No.27210 of 2016
and
W.M.P.No.23351 of 2016

PA(CO)
CA(18/08/2016)